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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/717,629      | 11/21/2003  | Allan P. Henderson   | P64761US2           | 8622             |

136 7590 01/19/2005

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| EXAMINER |
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NGUYEN, CHI Q

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3635

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

10/717,629

## Applicant(s)

HENDERSON, ALLAN P.

## Examiner

Chi Q Nguyen

## Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 15-22 and 33-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-22 and 33-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 11/21/03 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the serial number of the filed information disclosure statement does not match with the instant application serial number. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

### ***Claim Objections***

Claims 15 and 33 are objected to because of the following informalities: the cited limitation "a height approximately a height of said foundation" should be "a height approximately equal to a height of said foundation?" Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson (US 5,586,417).

Henderson teaches tensionless pier foundation in figures 1-4, and columns 6-8, a foundation for mounting a structure base on the foundation. The foundation including inner and outer upstanding corrugated pipe sections 12 and 14 which may be ten feet and eighteen feet, respectively, in diameter and generally twenty feet in length. The outer pipe 14 is initially placed within a hole or excavation 16 formed in the ground 18 and resting upon the bottom of the excavation 16. The inner corrugated pipe is then placed and positioned within the excavation 16 and the interior of the inner corrugated pipe 12 is partially back filled and the excavation 16 outwardly of the outer corrugated pipe 14 being initially partially back filled to stabilize the pipe sections generally in positioned within the excavation and relative to each other. The outer pipe 14 serves as a perimeter wall section, the inner pipe 12 serves as a pedestal section, and the concrete material in between serves as spread section that interconnecting the pedestal section and the perimeter wall section. And the perimeter wall section 14 has a greater diameter than the pedestal section 12 as shown in figure 1. A series of tensioning bolts 20, 21, rebar wraps 28 sever as tendons, concrete 68 may be poured to the bottom of each of the radial channel members 38 and to the top of each of the blockout bodies 64, and the foundation 10 is used for supporting tower 74 (fig. 8) or windmill towers (col. 8, lines 66-67).

Henderson does not teach expressly method steps of forming a foundation, which including excavating a generally circular or polygon ground pit having outer

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dimensions slightly greater than dimensions of the perimeter wall section and a height approximately equal to a height of the pedestal, a trench having outer dimensions substantially equal to the outer dimensions of the ground pit and inner dimensions slightly less than inner dimensions of the perimeter wall section and to a depth slightly less than a height of the perimeter wall section. The examiner considers this to be the obvious method of setting up device because in forming a foundation, one must obviously excavate a pit having a greater diameter than the perimeter section, position pedestal section inside the perimeter section, secure bolts and rebars radially, pour concrete material between the two sections. The concrete section serves as spread section that interconnecting the two sections and secure in place, fill the pit with backfill material and place and second a windmill tower on top of the foundation. Henderson would be motivated to follow these steps to facilitate assembly steps to make a strong foundation for the tower.

Claims 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson in view of Bressani (US 4,232,846).

Henderson teaches the structural elements for a foundation as stated except for a spread section interconnecting a lower end portion of the pedestal section and an upper end portion of the perimeter wall section. Bressani teaches a foundation for pole comprising a perimeter section 14, a pedestal section 12, a spread section 16 interconnecting a lower end portion of the pedestal section and an upper end portion of the perimeter wall section (fig. 1). At the time of the invention, it would have been obvious to a person of ordinary skill in the art modify Henderson with Bressani for the

pedestal higher than the perimeter section so that the spread section interconnecting a lower end of the pedestal section with a upper end of the perimeter section. The motivation for doing so would have been to provide a higher foundation thus minimize the material cost.

In regard to method steps, Henderson and Bressani teach the structural elements for the foundation. However, Henderson and Bressani do not teach expressly method steps of forming a foundation, which including excavating a generally circular or polygon ground pit having outer dimensions slightly greater than dimensions of the perimeter wall section and a height approximately equal to a height of the pedestal, a trench having outer dimensions substantially equal to the outer dimensions of the ground pit and inner dimensions slightly less than inner dimensions of the perimeter wall section and to a depth slightly less than a height of the perimeter wall section. The examiner considers this to be the obvious method of setting up device because in forming a foundation, one must obviously excavate a pit having a greater diameter than the perimeter section, position pedestal section inside the perimeter section, secure bolts and rebars radially, pour concrete material between the two sections. The concrete section serves as spread section that interconnecting the two sections and secure in place, fill the pit with backfill material and place and second a windmill tower on top of the foundation. Henderson and Bessani would be motivated to follow these steps to facilitate assembly steps to make a strong foundation for the tower.

### ***Conclusion***

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Simpson (US 5,131,790), Maliszewski (US 6,532,700), Bowlus (US 274,261) Smith (US 4,217,738), Hempel (US 4,406,094), Feldberg (US 6,216,414), Mould (US 274,638), and Gerszewski (US 4,918,891) teach foundation for towers.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.)  
CQN  
1/6/05

  
**BRIAN E. GLESSNER**  
**PRIMARY EXAMINER**